

WATER EASEMENT
W.E. 939

Document Number

Document Title

**WATER EASEMENT
WE-939**

In C.S.M. No. 8062, Lot 1
In Edison Street (Private)
From North Milwaukee Street
To East Pleasant Street

Drafted by:

City of Milwaukee
Department of Public Works

Recording Area

Name and Return Address

Milwaukee Water Works
DPW – Water Engineering Section
841 North Broadway – Room 403
Milwaukee, WI 53202

360-1782

Parcel Identification Number (PIN)

THIS WATER EASEMENT (the “**EASEMENT**”), is made as of _____, 20____, is from North End Phase I & II Condominium Association, Inc. (“**Grantor**”), as Grantor, to the CITY OF MILWAUKEE (“**City**”), a municipal corporation, as Grantee, and is for good and valuable consideration, receipt and sufficiency of which are acknowledged.

1. Grantor Parcel; Easement Area. Grantor is the condominium association for North End Phase I & II Condominium (the “**Condominium**”) and pursuant to the Declaration of North End Phase I & II Condominium Association (the “**Declaration**”), Grantor has the authority to grant an easement on and across the Common Elements (as such term is defined in the Declaration). For purposes hereof, the property comprising the Condominium is hereunder referred to as the “**Parcel**” and has, in part, an address of 455 East Pleasant Street, and a tax key number of 360-1782. Grantor is willing to grant to City a permanent non-exclusive easement in and to a part of that Parcel - which part is herein called the “**Easement Area.**” The Easement Area is comprised of a portion of the Common Elements and is legally described and depicted on **EXHIBIT A** attached.

2. Easement Grant. Grantor, grants to City, and City accepts, a permanent non-exclusive easement in and to the Easement Area, including the right of ingress and egress on, over and across the Easement Area. Within the Easement Area, City may construct, operate, maintain, inspect, repair, enlarge, reconstruct, replace, and relocate, as City deems necessary, an 8” water main (water infrastructure) and related facilities and appurtenances (the “**Facilities**”).

3. City Facilities Maintenance. City is responsible for maintaining the Facilities.

4. Easement Area Restriction. No structures or improvements may be constructed within the Easement Area by Grantor except dockwall anchoring and related equipment and appurtenances,

sewer and water pipes, outflows and related facilities, utility, cable, fiber optic and other lines, cables, wires, pipes and related equipment and appurtenances, lawns, walkways, roadways, driveways and parking-lot surfacing (“**Permitted Improvements**”). If, in exercising City rights hereunder, City causes damage to, or removes, any Permitted Improvements, City shall replace or repair same, at City expense to substantially the same condition as existed previously. In no case shall the City be responsible for replacing aesthetic plantings. The City and Grantor may rely on the as-built drawings required by Section 10 of this Easement. The City shall not be responsible for replacing or repairing any Permitted Improvements damaged by the City’s use of the Easement if the location of said Permitted Improvements is not consistent with the as-built drawings. Grantor shall not be responsible for replacing or repairing any of the Facilities if the location of the Facilities is not consistent with the as-built drawings

5. Hold Harmless. City will hold Grantor harmless from loss or injury resulting from City’s willful or negligent acts or omissions under this Easement. Grantor will hold City harmless from loss or injury resulting from Grantor’s willful or negligent acts or omissions under this Easement. If there is joint negligence or culpability on the part of City and Grantor, liability shall be borne by them, respectively, in proportion to their respective negligence or culpability. The foregoing provisions are subject to legal defenses available, respectively, to City and to Grantor.

6. Grantor Construction. If Grantor constructs any structure, building, or improvement adjacent to the Easement Area, or any Permitted Improvement within the Easement Area, or if Grantor undertakes any other work within the Easement Area, Grantor assumes liability for any damage to the Facilities in the Easement Area.

7. Charge. No charge will be made against the Parcel or Grantor for the cost of construction, operation, maintenance, inspection, repair, enlargement, reconstruction or relocation of the Facilities in the Easement Area, except (a) when Grantor applies for a permit or approval to connect to the Facilities, the regular and customary connection permit fee in effect at the time of application shall be paid, and Grantor shall connect per City requirements, and (b) the water maintenance, user fees, and other water fees in effect for all City of Milwaukee serviced properties that are chargeable to or against real property or owners, shall be paid.

8. Access. The Facilities and Easement Area shall be accessible to City at all times.

9. Prior Approval of Certain Work. Prior to undertaking any work below surface within the Easement Area, and prior to any underground installation within the Easement Area, and prior to any surface-grade alteration within the Easement Area that would raise or lower the surface elevation by 1 foot or more, then, in any such event, Grantor shall first submit plans therefore to the City for approval by the City’s Commissioner of Public Works (“**DPW Commissioner**”), and any such work, installation or alteration, requires prior approval of the DPW Commissioner, which approval shall not be unreasonably withheld, conditioned or delayed.

10. As Built Drawings. Within sixty (60) days after installation of any underground anchor facilities, lines, cables, wires, pipes or other underground facilities within the Easement Area, the party installing the same shall provide the other party with as built drawing(s) showing the location of such items.

11. Recording; Miscellaneous. This Easement (a) shall be recorded with the Milwaukee County Register of Deeds by City, (b) is governed by Wisconsin law, (c) may only be amended by written

instrument signed by all parties, and (d) is binding on successors, assigns, and heirs. Grantor has full right and authority to enter, and grant, this Easement.

12. Public Right-of-Way. If the Easement Area, or any part thereof, becomes public right-of-way owned by the City, Grantor’s rights hereunder as to such shall terminate.

13. Public Access Easement. The City acknowledges that the Easement Area is subject to that certain Perpetual Non-Exclusive Public Access Easement and Maintenance Agreement Edison Street (Phase I & II – The North End Project) dated January 27, 2011, by and among the City, Grantor and USL Land LLC.

14. WHEDA Mortgage. The City acknowledges that the Easement Area is subject to a Multifamily Mortgage, Assignment of Rents and Security Agreement (Construction Mortgage) (the “WHEDA Mortgage”) granted by Grantor to the Wisconsin Housing and Economic Development Authority (“WHEDA”). Until the earlier of the satisfaction or release of the WHEDA Mortgage against the Easement Area or the payment in full of the amount secured by the WHEDA Mortgage, this Easement shall not be amended without the approval of WHEDA, which consent shall not be unreasonably withheld, conditioned or delayed.

[Signature Page to Follow]

EXHIBIT A TO WATER EASEMENT WE-939 – PAGE 1 OF 2
LEGAL DESCRIPTION & DEPICITON OF “EASEMENT AREA”

Certain common elements of North End Phase I & II Condominium appurtenant to Units 1, 2 and 3 of the Condominium located within the area commonly referred to as Edison Street (Private) in Certified Survey Map No. 8062, in the Southeast One-quarter (SE. ¼) and Southwest One-quarter (SW. ¼) of Section Twenty-one (21), Township Seven (7) North, Range Twenty-two (22) East, in the City of Milwaukee, Milwaukee County, Wisconsin, which is bounded and described as follows:

TO-WIT:

Commencing at the West corner of Lot 1 of said C.S.M., said point being on the northeast line of N. Milwaukee St.; thence South 45° 35' 50" East, along said northeast line, 15.32 feet to the point of beginning of the easement to be described; thence North 30° 33' 00" East, 431.39 feet to a point, said point being on the southwest line of East Pleasant Street; thence South 54° 38' 13" East, along said southwest line, 20.07 feet to a point; thence South 30° 33' 00" West, 434.64 feet to a point on the northeast line of N. Milwaukee St.; thence North 45° 35' 50" West, along said northeast line, 20.60 feet to the point of beginning of the easement (the "Easement Area"), comprising a part of the common elements of the Condominium created by that certain Declaration of North End Phase I & II Condominium recorded as document no. _____ in the Office of the Register of Deeds for Milwaukee County, Wisconsin on _____, 2012.